

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-1001CP

IN THE MATTER OF THE APPLICATION OF MOUNTAIN MERCHANTS LLC DOING
BUSINESS AS ROCKY MOUNTAIN RIDE FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR
VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
CHANGING CAPTION; ACCEPTING AMENDMENT;
DISMISSING INTERVENTIONS; GRANTING
APPLICATION AMENDED UNDER MODIFIED
PROCEDURE; AND CLOSING PROCEEDING**

Mailed Date: November 14, 2014

I. STATEMENT

1. On October 3, 2014, Mountain Merchants LLC, doing business as Rocky Mountain Ride (Rocky Mountain or Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). That filing commenced this proceeding.

2. On October 6, 2014, the Commission issued its Notice of Application Filed (Notice) in this proceeding by publishing a summary of the same in its Notice as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in scheduled service and call-and-demand shuttle service

between all points in the Counties of El Paso, Park, Summit, and Teller, State of Colorado.

3. On October 6, 2014, Applicant filed its Amendment to Authority Language. If amended the authority would read as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand and scheduled shuttle service

between all points in the Counties of El Paso, Park, Summit, and Teller, State of Colorado.

4. On October 29, 2014, Fresh Tracks Transportation LLC (Fresh Tracks) filed its Entry of Appearance and Notice of Intervention. The Fresh Tracks filing identified Commission Authority No. 55753 as the basis of its intervention, and included a copy of the same. In addition, the Fresh Tracks filing included a preliminary disclosure of witnesses and exhibits it intends to present at the hearing in this matter.

5. On November 5, 2014, Colorado Springs Transportation LLC (Springs), doing business as, Yellow Cab of Colorado Springs, timely intervened of right through counsel. This filing attached Commission Authority No. 109 held by Springs.

6. On November 6, 2014, Rocky Mountain and Springs filed their Motion to Amend Application and Stipulation for Conditional Withdrawal of Intervention.

7. Under the amendment, the restrictively amended authority will read:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand and scheduled shuttle service

Between all points in Colorado Springs, Colorado and all points in Breckenridge, Colorado.

8. On November 12, 2014, Fresh Tracks filed its Withdraw of Intervention.

9. On November 12, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

10. To be acceptable, restrictions must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be contained wholly within the permit. Both must be worded so that a person will know, from reading the permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of an authority must be found within the four corners of the permit, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority.

11. The ALJ finds and concludes that the proposed amendments are restrictive in nature, are clear and understandable, and are administratively enforceable.

12. The restrictions to the authority sought by Applicant (*i.e.*, the amendments to the Application) will be accepted.

13. Accepting the amendments to the Application has two impacts. First, the authority sought will be amended to conform to the restrictive amendments. Second, the intervention of the Intervenors shall be withdrawn.

14. Withdrawal of the interventions and dismissal of the Intervenors leaves the Application, as amended, uncontested. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403, 4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure, the uncontested application may be processed under the modified procedure, without a formal hearing.

15. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

16. Applicant is a Colorado limited liability company in good standing.

17. Applicant requests authority to operate as a common carrier. By the Application, Rocky Mountain, seeks:

authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers on-call-and-demand and scheduled shuttle service

between all points in Colorado Springs, Colorado and all points in Breckenridge, Colorado.

18. The verified Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to be bound by, and to comply with, those rules. The verified Application and its supporting documentation establish that Applicant has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. Finally, review of the verified Application indicates a need for the proposed service. Therefore, because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the permit should be granted

19. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Commission administrative personnel shall amend the Commission's records to reflect that the caption for Proceeding No. 14A-1001CP is changed as set out above in this Decision.

2. The Motion to Amend the Application, as filed by Colorado Springs Transportation LLC, doing business as, Yellow Cab of Colorado Springs, on November 6, 2014 is granted.

3. The verified Application to Operate as a Common Carrier of Passengers by Motor Vehicle is amended consistent with the discussion above.

4. The intervention filed by Colorado Springs Transportation LLC, doing business as, Yellow Cab of Colorado Springs is withdrawn and it is dismissed from the proceeding.

5. The intervention filed by Fresh Tracks Transportation LLC is withdrawn and it is dismissed from the proceeding.

6. The Application to Operate as a Common Carrier of Passengers by Motor Vehicle filed by, Mountain Merchants LLC, doing business as Rocky Mountain Ride, as that application has been amended, is granted.

7. Mountain Merchants LLC, doing business as Rocky Mountain Ride, is granted authority to operate as a common carrier by motor vehicle for hire as follows:

authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand and scheduled shuttle service

between all points in Colorado Springs, Colorado and all points in Breckenridge, Colorado.

8. Mountain Merchants LLC, doing business as Rocky Mountain Ride shall operate in accordance with all applicable Colorado laws and Commission rules. All operations under the permit granted shall be strictly common carrier operations.

9. Mountain Merchants LLC, doing business as Rocky Mountain Ride, shall not commence operation until it has complied with the requirements of Colorado laws and Commission rules, including without limitation:

- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (b) paying to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (c) having an effective tariff on file with the Commission. Mountain Merchants LLC, doing business as Rocky Mountain Ride, shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs)]; and
- (d) paying the applicable issuance fee (\$5).

10. If Mountain Merchants LLC, doing business as Rocky Mountain Ride, does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the Permit shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

11. The Commission will notify Mountain Merchants LLC, doing business as Rocky Mountain Ride, in writing when the Commission's records demonstrate compliance with paragraph 9.

12. Proceeding No. 14A-1001CP is closed.

13. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

14. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

15. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge